

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY APRIL 19, 2006

AMENDED IN ASSEMBLY APRIL 5, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2308

Introduced by Assembly Member Plescia

February 22, 2006

An act to amend Sections 2472 and 4190 of the Business and Professions Code, to amend Sections 1204, 1206, 1214.1, 1226, 1226.5, 1233, 1242, and 1248.1 of, and to add Section 1204.2 to, the Health and Safety Code, and to amend Section 139.3 of the Labor Code, relating to health clinics.

LEGISLATIVE COUNSEL'S DIGEST

AB 2308, as amended, Plescia. Ambulatory surgical centers: licensure.

Existing law, with certain exceptions, provides for the licensure and regulation of health facilities and clinics, including specialty clinics, by the State Department of Health Services. Existing law defines a specialty clinic to include a surgical clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours. A violation of these provisions is a crime.

This bill would redesignate a surgical clinic as an ambulatory surgical clinic for purposes of these licensure and regulatory requirements and would make various conforming changes.

This bill would also require the department, not later than January 15, 2007, to convene a workgroup of specified composition for the development of licensure criteria for ambulatory surgical care centers.

This bill would require the workgroup to submit its findings and recommendations to the Legislature not later than ~~April 15~~, *March 1*, 2007.

This bill would also permit the department to contract with outside personnel for the performance of inspections of ambulatory surgical centers, as necessary.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2472 of the Business and Professions
2 Code is amended to read:
3 2472. (a) The certificate to practice podiatric medicine
4 authorizes the holder to practice podiatric medicine.
5 (b) As used in this chapter, “podiatric medicine” means the
6 diagnosis, medical, surgical, mechanical, manipulative, and
7 electrical treatment of the human foot, including the ankle and
8 tendons that insert into the foot and the nonsurgical treatment of
9 the muscles and tendons of the leg governing the functions of the
10 foot.
11 (c) A doctor of podiatric medicine may not administer an
12 anesthetic other than local. If an anesthetic other than local is
13 required for any procedure, the anesthetic shall be administered
14 by another licensed health care practitioner who is authorized to
15 administer the required anesthetic within the scope of his or her
16 practice.
17 (d) (1) A doctor of podiatric medicine who is ankle certified
18 by the board on and after January 1, 1984, may do the following:
19 (A) Perform surgical treatment of the ankle and tendons at the
20 level of the ankle pursuant to subdivision (e).
21 (B) Perform services under the direct supervision of a
22 physician and surgeon, as an assistant at surgery, in surgical
23 procedures that are otherwise beyond the scope of practice of a
24 doctor of podiatric medicine.
25 (C) Perform a partial amputation of the foot no further
26 proximal than the Chopart’s joint.
27 (2) Nothing in this subdivision shall be construed to permit a
28 doctor of podiatric medicine to function as a primary surgeon for
29 any procedure beyond his or her scope of practice.

1 (e) A doctor of podiatric medicine may perform surgical
2 treatment of the ankle and tendons at the level of the ankle only
3 in the following locations:

4 (1) A licensed general acute care hospital, as defined in
5 Section 1250 of the Health and Safety Code.

6 (2) A licensed ambulatory surgical center, as defined in
7 Section 1204 of the Health and Safety Code, if the doctor of
8 podiatric medicine has surgical privileges, including the privilege
9 to perform surgery on the ankle, in a general acute care hospital
10 described in paragraph (1) and meets all the protocols of the
11 ambulatory surgical center.

12 (3) An ambulatory surgical center that is certified to
13 participate in the Medicare Program under Title XVIII (42
14 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, if the
15 doctor of podiatric medicine has surgical privileges, including the
16 privilege to perform surgery on the ankle, in a general acute care
17 hospital described in paragraph (1) and meets all the protocols of
18 the surgical center.

19 (4) A freestanding physical plant housing outpatient services
20 of a licensed general acute care hospital, as defined in Section
21 1250 of the Health and Safety Code, if the doctor of podiatric
22 medicine has surgical privileges, including the privilege to
23 perform surgery on the ankle, in a general acute care hospital
24 described in paragraph (1). For purposes of this section, a
25 “freestanding physical plant” means any building that is not
26 physically attached to a building where inpatient services are
27 provided.

28 (5) An outpatient setting accredited pursuant to subdivision (g)
29 of Section 1248.1 of the Health and Safety Code.

30 (f) A doctor of podiatric medicine shall not perform an
31 admitting history and physical examination of a patient in an
32 acute care hospital where doing so would violate the regulations
33 governing the Medicare Program.

34 (g) A doctor of podiatric medicine licensed under this chapter
35 is a licentiate for purposes of paragraph (2) of subdivision (a) of
36 Section 805, and thus is a health care practitioner subject to the
37 provisions of Section 2290.5 pursuant to subdivision (b) of that
38 section.

39 SEC. 2. Section 4190 of the Business and Professions Code is
40 amended to read:

1 4190. (a) Notwithstanding any provision of this chapter, an
2 ambulatory surgical center, licensed pursuant to paragraph (1) of
3 subdivision (b) of Section 1204 of the Health and Safety Code,
4 accredited by an accreditation agency pursuant to Section 1248
5 of the Health and Safety Code, or certified to participate in the
6 Medicare Program under Title XVIII (42 U.S.C. Sec. 1395 et
7 seq.) of the federal Social Security Act, may purchase drugs at
8 wholesale for administration or dispensing, under the direction of
9 a physician, to patients registered for care at the center, as
10 provided in subdivision (b). The center shall keep records of the
11 kind and amounts of drugs purchased, administered, and
12 dispensed, and the records shall be available and maintained for
13 a minimum of seven years for inspection by all properly
14 authorized personnel.

15 (b) The drug distribution service of an ambulatory surgical
16 center shall be limited to the use of drugs for administration to
17 the patients of the ambulatory surgical center and to the
18 dispensing of drugs for the control of pain and nausea for patients
19 of the center. Drugs shall not be dispensed in an amount greater
20 than that required to meet the patient's needs for 72 hours. Drugs
21 for administration shall be those drugs directly applied, whether
22 by injection, inhalation, ingestion, or any other means, to the
23 body of a patient for his or her immediate needs.

24 (c) No ambulatory surgical center shall operate without a
25 license issued by the board nor shall it be entitled to the benefits
26 of this section until it has obtained a license from the board. Each
27 license shall be issued to a specific center and for a specific
28 location.

29 SEC. 3. Section 1204 of the Health and Safety Code is
30 amended to read:

31 1204. Clinics eligible for licensure pursuant to this chapter
32 are primary care clinics and specialty clinics.

33 (a) (1) Only the following defined classes of primary care
34 clinics shall be eligible for licensure:

35 (A) A "community clinic" means a clinic operated by a
36 tax-exempt nonprofit corporation that is supported and
37 maintained in whole or in part by donations, bequests, gifts,
38 grants, government funds or contributions, that may be in the
39 form of money, goods, or services. In a community clinic, any
40 charges to the patient shall be based on the patient's ability to

1 pay, utilizing a sliding fee scale. No corporation other than a
2 nonprofit corporation, exempt from federal income taxation
3 under paragraph (3) of subsection (c) of Section 501 of the
4 Internal Revenue Code of 1954 as amended, or a statutory
5 successor thereof, shall operate a community clinic; provided,
6 that the licensee of any community clinic so licensed on the
7 effective date of this section shall not be required to obtain
8 tax-exempt status under either federal or state law in order to be
9 eligible for, or as a condition of, renewal of its license. No
10 natural person or persons shall operate a community clinic.

11 (B) A “free clinic” means a clinic operated by a tax-exempt,
12 nonprofit corporation supported in whole or in part by voluntary
13 donations, bequests, gifts, grants, government funds or
14 contributions, that may be in the form of money, goods, or
15 services. In a free clinic there shall be no charges directly to the
16 patient for services rendered or for drugs, medicines, appliances,
17 or apparatuses furnished. No corporation other than a nonprofit
18 corporation exempt from federal income taxation under
19 paragraph (3) of subsection (c) of Section 501 of the Internal
20 Revenue Code of 1954 as amended, or a statutory successor
21 thereof, shall operate a free clinic; provided, that the licensee of
22 any free clinic so licensed on the effective date of this section
23 shall not be required to obtain tax-exempt status under either
24 federal or state law in order to be eligible for, or as a condition
25 of, renewal of its license. No natural person or persons shall
26 operate a free clinic.

27 (2) Nothing in this subdivision shall prohibit a community
28 clinic or a free clinic from providing services to patients whose
29 services are reimbursed by third-party payers, or from entering
30 into managed care contracts for services provided to private or
31 public health plan subscribers, as long as the clinic meets the
32 requirements identified in subparagraphs (A) and (B). For
33 purposes of this subdivision, any payments made to a community
34 clinic by a third-party payer, including, but not limited to, a
35 health care service plan, shall not constitute a charge to the
36 patient. This paragraph is a clarification of existing law.

37 (b) The following types of specialty clinics shall be eligible for
38 licensure as specialty clinics pursuant to this chapter:

39 (1) “Ambulatory surgical center” means a clinic that is not part
40 of a hospital and that provides ambulatory surgical care for

1 patients who remain less than 24 hours. An ambulatory surgical
2 center does not include any place or establishment owned or
3 leased and operated as a clinic or office by one or more
4 physicians or dentists in individual or group practice, regardless
5 of the name used publicly to identify the place or establishment,
6 provided, however, that physicians or dentists may, at their
7 option, apply for licensure.

8 (2) A “chronic dialysis clinic” means a clinic that provides less
9 than 24-hour care for the treatment of patients with end-stage
10 renal disease, including renal dialysis services.

11 (3) A “rehabilitation clinic” means a clinic that, in addition to
12 providing medical services directly, also provides physical
13 rehabilitation services for patients who remain less than 24 hours.
14 Rehabilitation clinics shall provide at least two of the following
15 rehabilitation services: physical therapy, occupational therapy,
16 social, speech pathology, and audiology services. A rehabilitation
17 clinic does not include the offices of a private physician in
18 individual or group practice.

19 (4) An “alternative birth center” means a clinic that is not part
20 of a hospital and that provides comprehensive perinatal services
21 and delivery care to pregnant women who remain less than 24
22 hours at the facility.

23 SEC. 4. Section 1204.2 is added to the Health and Safety
24 Code, to read:

25 1204.2. (a) Notwithstanding Section 1248, the department
26 shall convene a workgroup, not later than January 15, 2007, to
27 develop the licensure criteria to protect the health and safety of
28 patients receiving care in an ambulatory surgical center, as
29 defined in Section 1204. The workgroup shall submit its
30 conclusions and ~~recommendations to the Assembly Committee~~
31 ~~on Health no later than April 15, recommendations to the~~
32 ~~appropriate policy committees of the Legislature no later than~~
33 ~~March 1, 2007.~~ The workgroup shall include, but not be limited
34 to, representatives from all of the following:

- 35 (1) State Department of Health Services.
- 36 (2) Office of Statewide Health Planning and Development.
- 37 (3) California Ambulatory Surgery Association.
- 38 (4) California Medical Association.
- 39 (5) California Orthopedic Association.
- 40 (6) California Society of Anesthesiologists.

1 (7) California Academy of Ophthalmology.

2 (8) *California Podiatric Medical Association.*

3 (9) *Service Employees International Union.*

4 (10) *American Nurses Association of California.*

5 (11) *California Nurses Association.*

6 (12) *At least one advocacy organization that represents*
7 *consumers.*

8 (b) The members of the workgroup shall not receive
9 ~~compensation, but shall be individually reimbursed from private~~
10 ~~sources for necessary travel expenses for the purposes of~~
11 ~~attending meetings of the workgroup, including any public~~
12 ~~meetings that the workgroup schedules.~~ *compensation.*

13 (c) The department may contract for outside personnel to
14 perform inspections of ambulatory surgical centers, as ~~necessary.~~
15 ~~The department, when feasible, may contract with a nonprofit,~~
16 ~~professional organization that has been approved as an~~
17 ~~accreditation agency, as defined in subdivision (d) of Section~~
18 ~~1248, and has demonstrated the ability to administer the~~
19 ~~provisions of this chapter.~~ *necessary in a manner consistent with*
20 *the surveys conducted by the department pursuant to Section*
21 *1279.*

22 SEC. 5. Section 1206 of the Health and Safety Code is
23 amended to read:

24 1206. This chapter does not apply to the following:

25 (a) Except with respect to the option provided with regard to
26 ambulatory surgical centers described in paragraph (1) of
27 subdivision (b) of Section 1204 and further, with respect to
28 chronic dialysis clinics described in paragraph (2) of subdivision
29 (b) of Section 1204, any place or establishment owned or leased
30 and operated as a clinic or office by one or more licensed health
31 care practitioners and used as an office for the practice of their
32 profession, within the scope of their license, regardless of the
33 name used publicly to identify the place or establishment.

34 (b) Any clinic directly conducted, maintained, or operated by
35 the United States or by any of its departments, officers, or
36 agencies, and any primary care clinic specified in subdivision (a)
37 of Section 1204 that is directly conducted, maintained, or
38 operated by this state or by any of its political subdivisions or
39 districts, or by any city. Nothing in this subdivision precludes the
40 state department from adopting regulations that utilize clinic

1 licensing standards as eligibility criteria for participation in
2 programs funded wholly or partially under Title XVIII or XIX of
3 the federal Social Security Act.

4 (c) Any clinic conducted, maintained, or operated by a
5 federally recognized Indian tribe or tribal organization, as
6 defined in Section 450 or 1601 of Title 25 of the United States
7 Code, that is located on land recognized as tribal land by the
8 federal government.

9 (d) Clinics conducted, operated, or maintained as outpatient
10 departments of hospitals.

11 (e) Any facility licensed as a health facility under Chapter 2
12 (commencing with Section 1250).

13 (f) Any freestanding clinical or pathological laboratory
14 licensed under Chapter 3 (commencing with Section 1200) of
15 Division 2 of the Business and Professions Code.

16 (g) A clinic operated by, or affiliated with, any institution of
17 learning that teaches a recognized healing art and is approved by
18 the state board or commission vested with responsibility for
19 regulation of the practice of that healing art.

20 (h) A clinic that is operated by a primary care community or
21 free clinic and that is operated on separate premises from the
22 licensed clinic and is only open for limited services of no more
23 than 20 hours a week. An intermittent clinic as described in this
24 subdivision shall, however, meet all other requirements of law,
25 including administrative regulations and requirements, pertaining
26 to fire and life safety.

27 (i) The offices of physicians in group practice who provide a
28 preponderance of their services to members of a comprehensive
29 group practice prepayment health care service plan subject to
30 Chapter 2.2 (commencing with Section 1340).

31 (j) Student health centers operated by public institutions of
32 higher education.

33 (k) Nonprofit speech and hearing centers, as defined in Section
34 1201.5. Any nonprofit speech and hearing clinic desiring an
35 exemption under this subdivision shall make application therefor
36 to the director, who shall grant the exemption to any facility
37 meeting the criteria of Section 1201.5. Notwithstanding the
38 licensure exemption contained in this subdivision, a nonprofit
39 speech and hearing center shall be deemed to be an organized
40 outpatient clinic for purposes of qualifying for reimbursement as

1 a rehabilitation center under the Medi-Cal Act (Chapter 7
2 (commencing with Section 14000) of Part 3 of Division 9 of the
3 Welfare and Institutions Code).

4 (l) A clinic operated by a nonprofit corporation exempt from
5 federal income taxation under paragraph (3) of subsection (c) of
6 Section 501 of the Internal Revenue Code of 1954, as amended,
7 or a statutory successor thereof, that conducts medical research
8 and health education and provides health care to its patients
9 through a group of 40 or more physicians and surgeons, who are
10 independent contractors representing not less than 10
11 board-certified specialties, and not less than two-thirds of whom
12 practice on a full-time basis at the clinic.

13 (m) Any clinic, limited to in vivo diagnostic services by
14 magnetic resonance imaging functions or radiological services
15 under the direct and immediate supervision of a physician and
16 surgeon who is licensed to practice in California. This shall not
17 be construed to permit cardiac catheterization or any treatment
18 modality in these clinics.

19 (n) A clinic operated by an employer or jointly by two or more
20 employers for their employees only, or by a group of employees,
21 or jointly by employees and employers, without profit to the
22 operators thereof or to any other person, for the prevention and
23 treatment of accidental injuries to, and the care of the health of,
24 the employees comprising the group.

25 (o) A community mental health center, as defined in Section
26 5601.5 of the Welfare and Institutions Code.

27 (p) (1) A clinic operated by a nonprofit corporation exempt
28 from federal income taxation under paragraph (3) of subsection
29 (c) of Section 501 of the Internal Revenue Code of 1954, as
30 amended, or a statutory successor thereof, as an entity organized
31 and operated exclusively for scientific and charitable purposes
32 and that satisfied all of the following requirements on or before
33 January 1, 2005:

34 (A) Commenced conducting medical research on or before
35 January 1, 1982, and continues to conduct medical research.

36 (B) Conducted research in, among other areas, prostatic
37 cancer, cardiovascular disease, electronic neural prosthetic
38 devices, biological effects and medical uses of lasers, and human
39 magnetic resonance imaging and spectroscopy.

1 (C) Sponsored publication of at least 200 medical research
2 articles in peer-reviewed publications.

3 (D) Received grants and contracts from the National Institutes
4 of Health.

5 (E) Held and licensed patents on medical technology.

6 (F) Received charitable contributions and bequests totaling at
7 least five million dollars (\$5,000,000).

8 (G) Provides health care services to patients only:

9 (i) In conjunction with research being conducted on
10 procedures or applications not approved or only partially
11 approved for payment (I) under the Medicare Program pursuant
12 to Section 1359y(a)(1)(A) of Title 42 of the United States Code,
13 or (II) by a health care service plan registered under Chapter 2.2
14 (commencing with Section 1340), or a disability insurer
15 regulated under Chapter 1 (commencing with Section 10110) of
16 Part 2 of Division 2 of the Insurance Code; provided that services
17 may be provided by the clinic for an additional period of up to
18 three years following the approvals, but only to the extent
19 necessary to maintain clinical expertise in the procedure or
20 application for purposes of actively providing training in the
21 procedure or application for physicians and surgeons unrelated to
22 the clinic.

23 (ii) Through physicians and surgeons who, in the aggregate,
24 devote no more than 30 percent of their professional time for the
25 entity operating the clinic, on an annual basis, to direct patient
26 care activities for which charges for professional services are
27 paid.

28 (H) Makes available to the public the general results of its
29 research activities on at least an annual basis, subject to good
30 faith protection of proprietary rights in its intellectual property.

31 (I) Is a freestanding clinic, whose operations under this
32 subdivision are not conducted in conjunction with any affiliated
33 or associated health clinic or facility defined under this division,
34 except a clinic exempt from licensure under subdivision (m). For
35 purposes of this subparagraph, a freestanding clinic is defined as
36 “affiliated” only if it directly, or indirectly through one or more
37 intermediaries, controls, or is controlled by, or is under common
38 control with, a clinic or health facility defined under this
39 division, except a clinic exempt from licensure under subdivision
40 (m). For purposes of this subparagraph, a freestanding clinic is

1 defined as “associated” only if more than 20 percent of the
2 directors or trustees of the clinic are also the directors or trustees
3 of any individual clinic or health facility defined under this
4 division, except a clinic exempt from licensure under subdivision
5 (m). Any activity by a clinic under this subdivision in connection
6 with an affiliated or associated entity shall fully comply with the
7 requirements of this subdivision. This subparagraph shall not
8 apply to agreements between a clinic and any entity for purposes
9 of coordinating medical research.

10 (2) By January 1, 2007, and every five years thereafter, the
11 Legislature shall receive a report from each clinic meeting the
12 criteria of this subdivision and any other interested party
13 concerning the operation of the clinic’s activities. The report
14 shall include, but not be limited to, an evaluation of how the
15 clinic impacted competition in the relevant health care market,
16 and a detailed description of the clinic’s research results and the
17 level of acceptance by the payer community of the procedures
18 performed at the clinic. The report shall also include a
19 description of procedures performed both in clinics governed by
20 this subdivision and those performed in other settings. The cost
21 of preparing the reports shall be borne by the clinics that are
22 required to submit them to the Legislature pursuant to this
23 paragraph.

24 SEC. 6. Section 1214.1 of the Health and Safety Code is
25 amended to read:

26 1214.1. Notwithstanding Section 1214, each application for
27 an ambulatory surgical center or a chronic dialysis clinic under
28 this chapter for an initial license, renewal license, license upon
29 change of ownership, or special permit shall be accompanied by
30 an annual fee of three hundred dollars (\$300) plus an amount
31 equal to 0.0003 times the clinic’s operating cost for the last
32 completed fiscal year.

33 SEC. 7. Section 1226 of the Health and Safety Code is
34 amended to read:

35 1226. (a) The regulations shall prescribe the kinds of services
36 which may be provided by clinics in each category of licensure
37 and shall prescribe minimum standards of adequacy, safety, and
38 sanitation of the physical plant and equipment, minimum
39 standards for staffing with duly qualified personnel, and
40 minimum standards for providing the services offered. These

1 minimum standards shall be based on the type of facility, the
2 needs of the patients served, and the types and levels of services
3 provided.

4 (b) The Office of Statewide Health Planning and
5 Development, in consultation with the Community Clinics
6 Advisory Committee, shall prescribe minimum construction
7 standards of adequacy and safety for the physical plant of clinics
8 as found in the California Building Standards Code.

9 (c) A city or county, as applicable, shall have plan review and
10 building inspection responsibilities for the construction or
11 alteration of buildings described in paragraph (1) and paragraph
12 (2) of subdivision (b) of Section 1204 and shall apply the
13 provisions of the latest edition of the California Building
14 Standards Code in conducting these plan review responsibilities.
15 For these buildings, construction and alteration shall include
16 conversion of a building to a purpose specified in paragraphs (1)
17 and (2) of subdivision (b) of Section 1204.

18 Upon the initial submittal to a city or county by the governing
19 authority or owner of these clinics for plan review and building
20 inspection services, the city or county shall reply in writing to the
21 clinic whether or not the plan review by the city or county will
22 include a certification as to whether or not the clinic project
23 submitted for plan review meets the standards as propounded by
24 the office in the California Building Standards Code.

25 If the city or county indicates that its review will include this
26 certification it shall do all of the following:

27 (1) Apply the applicable clinic provisions of the latest edition
28 of the California Building Standards Code.

29 (2) Certify in writing, to the applicant within 30 days of
30 completion of construction whether or not these standards have
31 been met.

32 (d) If upon initial submittal, the city or county indicates that its
33 plan review will not include this certification, the governing
34 authority or owner of the clinic shall submit the plans to the
35 Office of Statewide Health Planning and Development who shall
36 review the plans for certification whether or not the clinic project
37 meets the standards, as propounded by the office in California
38 Building Standards Code.

1 (e) When the office performs review for certification, the
2 office shall charge a fee in an amount that does not exceed its
3 actual costs.

4 (f) The office of the State Fire Marshal shall prescribe
5 minimum safety standards for fire and life safety in ambulatory
6 surgical centers.

7 (g) Notwithstanding subdivision (c), the governing authority
8 or owner of a clinic may request the office to perform plan
9 review services for buildings described in subdivision (c). If the
10 office agrees to perform these services, after consultation with
11 the local building official, the office shall charge an amount not
12 to exceed its actual costs. The construction or alteration of these
13 buildings shall conform to the applicable provisions of the latest
14 edition of the California Building Standards Code for purposes of
15 the plan review by the office pursuant to this subdivision.

16 (h) Regulations adopted pursuant to this chapter establishing
17 standards for laboratory services shall not be applicable to any
18 clinic that operates a clinical laboratory licensed pursuant to
19 Section 1265 of the Business and Professions Code.

20 SEC. 8. Section 1226.5 of the Health and Safety Code is
21 amended to read:

22 1226.5. (a) It is the intent of the Legislature to establish
23 seismic safety standards for facilities licensed as ambulatory
24 surgical centers pursuant to this chapter, and for facilities
25 certified for participation in the federal Medicare Program as
26 ambulatory surgical centers, which accommodate surgical
27 patients under general anesthesia, but are not required to remain
28 open and usable after an earthquake to accommodate emergency
29 patients.

30 (b) A facility described in subdivision (a) which, after January
31 1, 1991, anchors fixed medical equipment to the floor or roof of
32 the facility with a gross operating weight of more than 400
33 pounds or anchors fixed medical equipment to the walls or
34 ceiling with a gross operating weight of more than 20 pounds
35 shall retain the services of an architect licensed in California, a
36 structural engineer licensed in California, or a civil engineer
37 registered in California to assure that the equipment is anchored
38 in such a manner to meet the requirements of an occupancy
39 importance factor of 1.00, as set forth in Title 24 of the
40 California Code of Regulations.

1 (c) A facility described in subdivision (a) which retains the
2 services of an architect or engineer for the anchorage of fixed
3 medical equipment shall keep available for inspection by the
4 department for a period of five years following the installation, a
5 current written certification from the architect or engineer that
6 the equipment is mounted in accordance with the applicable
7 requirements.

8 SEC. 9. Section 1233 of the Health and Safety Code is
9 amended to read:

10 1233. An ambulatory surgical center may restrict use of its
11 facilities to members of the medical staff of the ambulatory
12 surgical center and other physicians and surgeons approved by
13 the medical staff to practice at the center.

14 SEC. 10. Section 1242 of the Health and Safety Code is
15 amended to read:

16 1242. The director may temporarily suspend any license
17 issued to a specialty clinic or special permit prior to any hearing,
18 when in his opinion such action is necessary to protect the public
19 welfare. The director shall notify the licensee or holder of a
20 special permit of the temporary suspension and the effective date
21 thereof, and at the same time shall serve such provider with an
22 accusation. Upon receipt of a notice of defense by the licensee or
23 holder of a special permit, the director shall set the matter for
24 hearing within 30 days after receipt of such notice. The
25 temporary suspension shall remain in effect until the time when
26 the hearing is completed and the director has made a final
27 determination on the merits; provided, however, that the
28 temporary suspension shall be deemed vacated if the director
29 fails to make a final determination on the merits within 60 days
30 after the original hearing has been completed.

31 If the provisions of this chapter or the rules or regulations
32 promulgated by the director are violated by a licensed
33 ambulatory surgical center or chronic dialysis clinic or holder of
34 a special permit which is a group, corporation, or other
35 association, the director may suspend the license or special
36 permit of the organization or may suspend the license or special
37 permit as to any individual person within the organization who is
38 responsible for the violation.

39 SEC. 11. Section 1248.1 of the Health and Safety Code is
40 amended to read:

1 1248.1. No association, corporation, firm, partnership, or
2 person shall operate, manage, conduct, or maintain an outpatient
3 setting in this state, unless the setting is one of the following:

4 (a) An ambulatory surgical center that is certified to
5 participate in the Medicare Program under Title XVIII (42
6 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act.

7 (b) Any clinic conducted, maintained, or operated by a
8 federally recognized Indian tribe or tribal organization, as
9 defined in Section 450 or 1601 of Title 25 of the United States
10 Code, and located on land recognized as tribal land by the federal
11 government.

12 (c) Any clinic directly conducted, maintained, or operated by
13 the United States or by any of its departments, officers, or
14 agencies.

15 (d) Any primary care clinic licensed under subdivision (a) of
16 Section 1204 or any ambulatory surgical center licensed under
17 subdivision (b) of Section 1204.

18 (e) Any health facility licensed as a general acute care hospital
19 under Chapter 2 (commencing with Section 1250).

20 (f) Any outpatient setting to the extent that it is used by a
21 dentist or physician and surgeon in compliance with Article 2.7
22 (commencing with Section 1646) or Article 2.8 (commencing
23 with Section 1647) of Chapter 4 of Division 2 of the Business
24 and Professions Code.

25 (g) An outpatient setting accredited by an accreditation agency
26 approved by the division pursuant to this chapter.

27 (h) A setting, including, but not limited to, a mobile van, in
28 which equipment is used to treat patients admitted to a facility
29 described in subdivision (a), (d), or (e), and in which the
30 procedures performed are staffed by the medical staff of, or other
31 health care practitioners with clinical privileges at, the facility
32 and are subject to the peer review process of the facility but
33 which setting is not a part of a facility described in subdivision
34 (a), (d), or (e).

35 Nothing in this section shall relieve an association, corporation,
36 firm, partnership, or person from complying with all other
37 provisions of law that are otherwise applicable.

38 SEC. 12. Section 139.3 of the Labor Code is amended to
39 read:

1 139.3. (a) Notwithstanding any other provision of law, to the
2 extent those services are paid pursuant to Division 4
3 (commencing with Section 3200), it is unlawful for a physician
4 to refer a person for clinical laboratory, diagnostic nuclear
5 medicine, radiation oncology, physical therapy, physical
6 rehabilitation, psychometric testing, home infusion therapy,
7 outpatient surgery, or diagnostic imaging goods or services
8 whether for treatment or medical-legal purposes if the physician
9 or his or her immediate family, has a financial interest with the
10 person or in the entity that receives the referral.

11 (b) For purposes of this section and Section 139.31, the
12 following shall apply:

13 (1) "Diagnostic imaging" includes, but is not limited to, all
14 X-ray, computed axial tomography magnetic resonance imaging,
15 nuclear medicine, positron emission tomography,
16 mammography, and ultrasound goods and services.

17 (2) "Immediate family" includes the spouse and children of
18 the physician, the parents of the physician, and the spouses of the
19 children of the physician.

20 (3) "Physician" means a physician as defined in Section
21 3209.3.

22 (4) A "financial interest" includes, but is not limited to, any
23 type of ownership, interest, debt, loan, lease, compensation,
24 remuneration, discount, rebate, refund, dividend, distribution,
25 subsidy, or other form of direct or indirect payment, whether in
26 money or otherwise, between a licensee and a person or entity to
27 whom the physician refers a person for a good or service
28 specified in subdivision (a). A financial interest also exists if
29 there is an indirect relationship between a physician and the
30 referral recipient, including, but not limited to, an arrangement
31 whereby a physician has an ownership interest in any entity that
32 leases property to the referral recipient. Any financial interest
33 transferred by a physician to, or otherwise established in, any
34 person or entity for the purpose of avoiding the prohibition of
35 this section shall be deemed a financial interest of the physician.

36 (5) A "physician's office" is either of the following:

37 (A) An office of a physician in solo practice.

38 (B) An office in which the services or goods are personally
39 provided by the physician or by employees in that office, or
40 personally by independent contractors in that office, in

1 accordance with other provisions of law. Employees and
2 independent contractors shall be licensed or certified when that
3 licensure or certification is required by law.

4 (6) The “office of a group practice” is an office or offices in
5 which two or more physicians are legally organized as a
6 partnership, professional corporation, or not-for-profit
7 corporation licensed according to subdivision (a) of Section 1204
8 of the Health and Safety Code for which all of the following are
9 applicable:

10 (A) Each physician who is a member of the group provides
11 substantially the full range of services that the physician
12 routinely provides, including medical care, consultation,
13 diagnosis, or treatment, through the joint use of shared office
14 space, facilities, equipment, and personnel.

15 (B) Substantially all of the services of the physicians who are
16 members of the group are provided through the group and are
17 billed in the name of the group and amounts so received are
18 treated as receipts of the group, and except that in the case of
19 multispecialty clinics, as defined in subdivision (l) of Section
20 1206 of the Health and Safety Code, physician services are billed
21 in the name of the multispecialty clinic and amounts so received
22 are treated as receipts of the multispecialty clinic.

23 (C) The overhead expenses of, and the income from, the
24 practice are distributed in accordance with methods previously
25 determined by members of the group.

26 (7) Outpatient surgery includes both of the following:

27 (A) Any procedure performed on an outpatient basis in the
28 operating rooms, ambulatory surgery rooms, endoscopy units,
29 cardiac catheterization laboratories, or other sections of a
30 freestanding ambulatory surgical center, whether or not licensed
31 under paragraph (1) of subdivision (b) of Section 1204 of the
32 Health and Safety Code.

33 (B) The ambulatory surgery itself.

34 (c) (1) It is unlawful for a licensee to enter into an
35 arrangement or scheme, such as a cross-referral arrangement, that
36 the licensee knows, or should know, has a principal purpose of
37 ensuring referrals by the licensee to a particular entity that, if the
38 licensee directly made referrals to that entity, would be in
39 violation of this section.

1 (2) It shall be unlawful for a physician to offer, deliver,
2 receive, or accept any rebate, refund, commission, preference,
3 patronage dividend, discount, or other consideration, whether in
4 the form of money or otherwise, as compensation or inducement
5 for a referred evaluation or consultation.

6 (d) No claim for payment shall be presented by an entity to
7 any individual, third-party payer, or other entity for any goods or
8 services furnished pursuant to a referral prohibited under this
9 section.

10 (e) A physician who refers to or seeks consultation from an
11 organization in which the physician has a financial interest shall
12 disclose this interest to the patient or if the patient is a minor, to
13 the patient's parents or legal guardian in writing at the time of the
14 referral.

15 (f) No insurer, self-insurer, or other payer shall pay a charge or
16 lien for any goods or services resulting from a referral in
17 violation of this section.

18 (g) A violation of subdivision (a) shall be a misdemeanor. The
19 appropriate licensing board shall review the facts and
20 circumstances of any conviction pursuant to subdivision (a) and
21 take appropriate disciplinary action if the licensee has committed
22 unprofessional conduct. Violations of this section may also be
23 subject to civil penalties of up to five thousand dollars (\$5,000)
24 for each offense, which may be enforced by the Insurance
25 Commissioner, Attorney General, or a district attorney. A
26 violation of subdivision (c), (d), (e), or (f) is a public offense and
27 is punishable upon conviction by a fine not exceeding fifteen
28 thousand dollars (\$15,000) for each violation and appropriate
29 disciplinary action, including revocation of professional
30 licensure, by the Medical Board of California or other
31 appropriate governmental agency.